



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201108047

DEC - 2 2010

U.I.L. 408.03-00

SE:T:EP:RA:T3

Legend:

Taxpayer A =

IRA X =

Bank B =

Bank C =

Amount D =

Individual F =

Dear :

This letter is in response to your letter dated , as supplemented by correspondence dated , submitted on your behalf by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

You assert that your failure to accomplish a rollover of Amount D into an IRA within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error committed by Bank C and Individual F. You further assert that Amount D has not been used for any other purpose.

You state that you maintained IRA X with Bank B. On September 12, 2008, you received a distribution of Amount D from IRA X and you immediately went to Bank C to deposit Amount D with the intent to rollover Amount D into an IRA with Bank C. You further state that at Bank C, you spoke with Individual F who was familiar with your financial affairs and with whom you had worked for many years on your financial matters. You assert that you told Individual F that Amount D was from your IRA X and you wanted Amount D to be deposited into a rollover account.

You assert that you left Bank C with the impression that Amount D was deposited into a rollover account as you intended. You further assert that you did not know that Amount D was deposited into a non-IRA account until July 26, 20 , when you received a Notice from the Internal Revenue Service.

You state that when you discovered that Amount D was not rolled over into a rollover account, you went to Bank C and met with Individual F who conducted an official inquiry and discovered that due to an error on the part of Bank C Amount D was mistakenly deposited into a non-IRA account and not in an IRA account as you intended. Bank C in a letter dated has admitted its error in establishing a non-IRA account.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the

payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by you is consistent with your assertion that your failure to accomplish a rollover of Amount D was caused by an error committed by Bank C. In a letter dated Individual F acknowledged that the paper-work prepared by Bank C erroneously established a non-IRA account to which the IRA funds were transferred.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a rollover IRA in her name. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the Service will treat the

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contribution of Amount D as a rollover contribution within the meaning of Code section 408(d)(3).

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with Form 2848 on file in this office.

If you have any questions concerning this ruling, please contact _____, ID Number _____, SE: T: EP: RA: T3, at _____.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice 437

Cc: